

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

UNITED STATES OF AMERICA)
)
)
) Cr. No. 19-190-13
v.) (Civ. No. 23-40)
)
CHE WILLIAMS)

ORDER

Presently before the Court is Petitioner Che Williams's Motion to Vacate Pursuant to 28 U.S.C. § 2255. ECF No. 1180. On March 6, 2023, after conducting a Preliminary Review under Rule 4 of the Rules Governing Section 2255 Proceedings, the Court issued a Memorandum Order concluding that the Motion is subject to dismissal. Mem. Order, Mar. 6, 2023. The Court found that Petitioner would be unable to obtain any relief on his ineffective assistance of counsel claims. *Id.* The Court informed Petitioner and the government that they may respond to the Court's determination that the Motion is subject to dismissal, by April 7, 2023.

As of the date of this Order, Mr. Williams has not filed a response. On April 7, 2023, the government filed a Response in which it proffered several additional reasons why Petitioner's Motion should be dismissed upon preliminary review. ECF No. 1189. The government presents a persuasive argument that Petitioner's ineffectiveness of counsel claim for failing to challenge his Career Offender determination is an impermissible circumvention of Petitioner's waiver of his appeal rights, agreed to in his Plea Agreement. *Id.* at 1-3. Next, the government argues that Petitioner's argument, that he was incorrectly determined to be a Career Offender, is a claim that is not cognizable under section 2255. *Id.* at 3-4 (citing, among others, *United States v. Folk*, 954 F.3d 600, 609 (3d Cir. 2020)). As to Petitioner's second claim, that his counsel was ineffective for failing to file an appeal, the government provides several meritorious reasons why such a claim would not be successful on its merits. *Id.* at 4-7.

AND NOW, this 17th day of May 2023, as explained in the Court's March 6, 2023 Memorandum Order, and for the additional reasons cited by the government, Petitioner Che Williams' Motion Under 28 U.S.C. § 2255 to Vacate, Set Aside or Correct Sentence by a Person in Federal Custody (ECF No. 1180) is hereby dismissed under Rule 4 of the Rules Governing Section 2255 Proceedings as it plainly appears from the Motion and the record of prior proceedings, that Mr. Williams is not entitled to relief.

s/Marilyn J. Horan
Marilyn J. Horan
United States District Judge

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